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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/381,385

02/01/2000

PHILIP C. ASHMAN

BWTIUSA

3888

270 7590 04/15/2008

HOWSON AND HOWSON
SUITE 210
501 OFFICE CENTER DRIVE
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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/381,385	Applicant(s) ASHMAN ET AL.	
	Examiner MARC A. PATTERSON	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,12,15-17,19-21,23,26,32,35,37 and 39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,12,15-17,19-21,23,26,32,35,37 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

NEW REJECTIONS

Claim Rejections – 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5 - 6, 12, 15 - 17, 19 - 21, 23, 26, 32, 35, 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudert et al (U.S. Patent No. 5,523,045) in view of Fukui et al (Japanese Patent No. 03041135) and Branch (U.K. Patent No. 2295617).

With regard to Claims 1, 6, 15, 19, 26, 32 and 35, Kudert et al disclose a method for storing a flavored good (food; column 1, lines 25 - 26) comprising the step of providing a laminated material having a core barrier layer sandwiched between an outer layer and at least one further layer (column 27, lines 62 - 67; column 28, lines 1 - 12), the further layer being formed from a non - polar thermoplastic resin that is high density polyethylene (column 29, line 54) filled with an inorganic filler comprising talc (column 30, lines 14 - 15); the core layer comprising ethylene vinyl alcohol is a barrier layer having a thickness of less than 5 to 15 microns (0.001 inch or less; column 30, lines 52 - 62) and storing a flavored good in a container formed from the laminate material (food; column 1, lines 25 - 26); the further layer therefore extending between the flavored good and the core barrier layer; Kudert et al therefore also disclose a laminate material having the laminate layer structure and a container formed from the laminate; Kudert et al do not disclose a platelet - filled barrier layer, and therefore disclose a non

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- platelet filled barrier layer; Kudert et al does not disclose components other than resin for the barrier layer and polyolefin and talc for the further layer and therefore discloses a further layer consisting of a non - polar resin and talc and a barrier layer consisting essentially of resin; with regard to the claimed aspect of the container reducing absorption of flavoring, Kudert et al do not disclose absorption of flavoring, and therefore discloses reduced absorption of flavoring; because the laminate is made into a container the layer also container provides a stiffness which allows the laminate to have a relatively thin thickness. However, the claimed aspects of the talc filled layer reducing absorption and providing stiffness are directed to intended use of the layer, which are given little patentable weight. Kudert et al fail to disclose 5% talc by weight and talc which is a high purity talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio from 16 to 30.

Fukui et al teach a container comprising 5% talc for the purpose of obtaining a container for the containment of food (English Abstract - Constitution). One of ordinary skill in the art would therefore have recognized the advantage of providing for the amount of talc of Fukui et al in Kudert et al, which comprises a container, depending on the desired containment of food of the end product.

Branch teaches the use of a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 (page 5, second paragraph; page 6, third paragraph; Abstract) for the purpose of obtaining a container which provides a good oxygen barrier (page 3, third paragraph) and a talc which is a high purity talc (purer grades of talc, therefore talc of high purity, is preferred; page 5, third paragraph) for the purpose of obtaining talc which has a high degree of whiteness without using a pigment (page 5, third paragraph).

Therefore, one of ordinary skill in the art would have recognized the advantage of providing for the high purity talc having a CIE whiteness of at least 40, and an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 of Branch in Kudert et al, which is a container having an oxygen barrier, depending on the desired oxygen barrier and whiteness of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a talc having a CIE whiteness index of at least 40, which includes 45, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 in Kudert et al in order to obtain a container which provides a good oxygen barrier and whiteness without the use of a pigment as taught by Branch and talc in the amount of 5% by weight in Kudert et al for the purpose of obtaining a container for the containment of food as taught by Fukui et al.

Kudert et al also fail to disclose a further layer having a thickness of between 10 and 70 microns. However, Kudert et al disclose the selection of the further layer to provide a desired thickness depending on the desired use of the end product (the layer is thin, and preferably very thin; column 28, lines 21 – 24). It would therefore be obvious for one of ordinary skill in the art, through routine optimization, to select the thickness of the layer depending on the desired use of the end product as taught by Kudert et al.

With regard to Claims 5, 12, 17 and 23, the further layer disclosed by Kudert et al is spaced from the inner, and therefore internal, surface of the laminated material by an additional layer of non - polar thermoplastic material filled by a platelet filler (column 28, line 5).

With regard to Claim 16, the further layer disclosed by Kudert et al is adjacent the barrier layer and is adhered thereto by a tie layer (column 28, lines 6 - 8).

With regard to Claims 20 - 21, 37 and 39, Kasai discloses the blending of polypropylene with a polyethylenes or other polyolefins to obtain a layer, therefore is heat sealable (column 29, lines 50 - 60) and therefore discloses a further layer comprising linear medium density polyethylene.

ANSWERS TO APPLICANT'S ARGUMENTS

3. Applicant's arguments regarding the rejection of Claims 1, 5 - 6, 12, 15 - 21 and 23 - 40 under 35 U.S.C. 103(a) as being unpatentable over Kudert et al (U.S. Patent No. 5,523,045) in view of Fukui et al (Japanese Patent No. 03041135) and Branch (U.K. Patent No. 2295617), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 10 of the remarks dated April 20, 2008, that Kudert et al fail to disclose a barrier layer having a thickness of 5 to 15 microns.

However, as stated above, that Kudert et al disclose a barrier layer having a thickness of 5 to 15 microns.

Applicant also argues, on page 10, the disclosure of talc in Kudert et al is vague and non-enabling; neither the content, type, nor specific location of the talc is disclosed.

However, there is no specific location or type of talc that is claimed; furthermore, as stated on page 2 of the previous Action, the content of talc that is claimed is taught by Fukui et al.

Applicant also argues, on page 14, that Fukui et al and Branch do not teach co - injection molding and do not teach whether bleeding would occur during co - injection molding; Fukui et

al and Branch, Applicant argues, both teach containers, but teach different technologies from Kudert et al.


However, as stated on page 3 of the previous Action, Fukui et al and Branch are cited only with regard to the amount and whiteness of talc; because the use of talc is already disclosed by Kudert et al, and the amount and whiteness are not limited by Fukui et al, it would have been obvious for one of ordinary skill in the art to have provided for the amount and whiteness of talc of Fukui et al and Branch in Kudert et al, which also discloses a container, although co - injection is not disclosed.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/
Primary Examiner, Art Unit 1794

<div>Application Number</div> <div></div>	Application/Control No.	Applicant(s)/Patent under Reexamination	
	09/381,385	ASHMAN ET AL.	
	Examiner	Art Unit	
	MARC A. PATTERSON	1794	